IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7225 OF 2002

Shri Eknath Pandurang Tokade & Ors. : Petitioners

V/s.

Ghoti Gram Panchayat & Anr. : Respondents

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With

WRIT PETITION NO.7226 OF 2002

Shri Eknath Pandurang Tokade & Ors. : Petitioners

V/s.

Sub-Divisional Engineer,

Sub-Division No.25 & Anr. : Respondents

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Mr.P.L.Bhujbal for the petitioners.

Mr.M.H.Solkar, Assistant Government Pleader for the respondents.

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CORAM : S.A. BOBDE, J.

February 28, 2005.

P.C.:

1. The petitioners have challenged the judgement dated 14.6.2002 passed by the IIIrd Addl. District Judge, Nasik. By the impugned judgement, the learned IIIrd Addl. District Judge has dismissed the petitioners' application

for injunction which was earlier granted by the trial Court by order dated 21.3.1998.

2. The petitioners filed a suit claiming to be in possession of the property belonging to Ghoti Gram Panchayat known as "Bajarcha Mal". They contended that they are in lawful possession of the premises and doing business thereon in temporary tin-sheds on payment of rent to Ghoti Gram Panchayat. Their grievance was that in 1997 the Gram, panchayat started evicting them with an intention to construct a new shopping centre on the said property and, therefore, they filed the suit. The trial Court granted an injunction.

3. Meanwhile, it appears that the petitioners also filed another civil suit, being Regular Civil Suit no.800 of 1998 in the Court of the IIIrd Civil Judge, Senior Division, Nasik, contending that after the injunction was granted against the Ghoti Gram Panchayat, the National Highway authorities have issued notices to the petitioners to evict them. In this suit, they sought an injunction restraining the National Highway authorities from taking any action against the petitioners. In this suit, the petitioners' injunction application was rejected.

4. The orders in both these suits were appealed against which have been heard and decided by the impugned judgement.

5. I have heard the learned counsel for the petitioners at length and perused the judgement of the trial Court. The trial Court found that even though the injunction order in Regular Civil Suit no.509 of 1997 may appear to be sustainable, the facts disclosed in the other suit suit, viz., Regular Civil Suit No.800 of 1998 against the National Highway authority show an entirely different picture. The appellate Court has found that prima facie, the Gram Panchayat is no more the owner of the property which vests in the National Highway authorities. This fact is also admitted by the Ghoti Gram Panchayat in favour of the National Highway authorities. The appellate Court relied on the letter dated 15.3.1999 by which the Ghoti Gram Panchayat stated that the measurement of the suit property was carried out jointly by the Gram Panchayat and the National Highway authorities and that in the course of the measurement, it was found that the suit structures of the petitioners came within the jurisdiction of the National Highway. The appellate Court has observed that the Highway authorities issued notices to the petitioners to remove the encroachment in the years 1986,

1990 and 1992 under the Bombay Highways Act which is not disputed by the petitioners. In fact, the petitioners did not prefer any appeal against the notices served on them as contemplated by sub-section (1) of section 23 of the Act. The appellate Court has found that the Act is a self-contained Code and section 68 of the Act provides for ouster of the jurisdiction of the Civil Court. Having regard to the power of the highway authorities to remove the encroachment made on the highway, the appellate Court has allowed the appeal. In fact, the appellate Court has observed that the grant of injunction to the petitioners would come in the way of performance of the statutory duty by the highway authorities.

6. In the above circumstances, I see no reason to interfere with the impugned order. These Writ Petitions are, accordingly, dismissed.

Sd/-

S.A. BOBDE, J.